

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2748

**Introduced by Committee on Environmental Safety and Toxic
Materials (Assembly Members Alejo (Chair), Bloom, Stone, and
Ting)**

(Coauthor: Assembly Member Lowenthal)

March 6, 2014

An act to amend Sections 25217.2, 25507, and 25513 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as amended, Committee on Environmental Safety and Toxic Materials. Hazardous waste: business plans.

(1) Existing law generally prohibits any person from disposing of latex paint, unless authorized, but allows recyclable latex paint to be accepted at any location if certain requirements are met, including that the owners or operators of the location have a business plan that meets specified requirements.

This bill would repeal the requirement that the owner or operator of the location have such a business plan in order to accept recyclable latex paint.

(2) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program, including a statewide information management system, for purposes of receiving data collected by unified program agencies. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program and be certified as a certified unified program agency

(CUPA), and every county is required to apply to the secretary to be certified to implement the unified program. Existing law also requires each CUPA to institute a single-fee system, with a surcharge on each person regulated by the unified program to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities in the unified hazardous waste and hazardous materials management regulatory program.

Existing law requires the CUPA to implement and enforce provisions that require a business that handles a hazardous material to establish and implement a business plan. Existing law ~~requires a business that handles 5,000 pounds of solids or 550 gallons of liquids that are classified as a hazard solely as an irritant or sensitizer to establish and implement a business plan for emergency response to a release, or threatened release, of the hazardous material, as specified, unless the CUPA finds, and notifies the business, that the handling of lesser quantities of that hazardous material requires the submission of a business plan or any portion of a business plan.~~ Existing law requires the business plan to be electronically submitted to the statewide information management system and requires the local agency to review and determine whether the business plan satisfies certain requirements. A person who knowingly violates this provision is guilty of a misdemeanor.

The California Integrated Waste Management Act of 1989, requires a manufacturer of architectural paint or designated stewardship organization to submit to the Department of Resources Recycling and Recovery an architectural paint stewardship plan to develop and implement a recovery program to manage the end of life of postconsumer architectural paint.

~~This bill would repeal the requirement that a business submit a business plan or any portion of the business plan if the CUPA finds that the handling of lesser quantities requires the submission of the business plan. This bill would also require a business that handles paint that will be recycled or managed under an architectural paint recovery program approved by the department to establish and implement a business plan only if the business handles 10,000 pounds of solids solid hazardous materials or 1,000 gallons of liquids that are hazardous materials to establish and implement a business plan if the solid or liquid is a paint that will be recycled or managed under a stewardship program, as specified. By requiring additional businesses to submit business plans subject to review by a local agency, this bill would increase the duties~~

~~of local officials and impose a state-mandated local program. By changing the scope of a crime, this bill would impose a state-mandated local program. liquid hazardous materials. The bill would authorize the CUPA to charge a one-time fee, not to exceed \$100, to would prohibit the CUPA from imposing a fee upon a business that handles less than the above-described amounts of paint that is recycled or otherwise managed under a stewardship program. The bill would provide that these fees shall not exceed the CUPA's costs of carrying out its responsibilities relating to these businesses. is implementing an approved architectural paint recovery program and that is exempt from the business plan requirements for the cost of processing that exemption.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes/no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 25217.2 of the Health and Safety Code
2 is amended to read:
3 25217.2. (a) Recyclable latex paint may be accepted at any
4 location including, but not limited to, a permanent household
5 hazardous waste collection facility in accordance with subdivision
6 (b), if all of the following conditions are met:
7 (1) The location manages the recyclable latex paint in
8 accordance with all applicable latex paint product management
9 procedures specified by federal, state, or local law or regulation
10 that include, at a minimum, that the recyclable latex paint is stored
11 and handled in a manner that minimizes the chance of exposing
12 the handler and the environment to potentially hazardous
13 constituents that may be in, or have been incidentally added to,
14 the recyclable latex paint.

(2) The recyclable latex paint is still in liquid form and is in its original packaging or is in a closed container that is clearly labeled.

(3) Any latex paint that is accepted as recyclable by the location and that is later discovered to be nonrecyclable shall be deemed to be a waste generated at the location where the discovery is made and the latex paint shall be managed as a waste in accordance with this chapter.

(4) If the recyclable latex paint is not excluded or exempted from regulation under Chapter I (commencing with Section 1.1) of Title 40 of the Code of Federal Regulations, the location meets all applicable federal requirements.

(5) The recyclable latex paint is stored for no longer than 180 days.

(b) (1) For purposes of this subdivision the following definitions shall apply:

(A) “CESQG” means a conditionally exempt small quantity generator, as specified in subdivision (a) of Section 25218.1.

(B) “Permanent household hazardous waste collection facility” has the same meaning as defined in subdivision (h) of Section 25218.1.

(2) A permanent household hazardous waste collection facility that is authorized to accept hazardous waste from a CESQG pursuant to Section 25218.3 may accept recyclable latex paint from any generator in accordance with this article if the permanent household hazardous waste collection facility does all of the following:

(A) Complies with subdivision (a).

(B) Sends the recyclable latex paint, for recycling, to a latex paint recycling facility operating pursuant to this article.

(C) Maintains a monthly log of the volume of latex paint collected from each generator and submits that information annually with the report submitted pursuant to Section 25218.9 for household hazardous waste collected from household hazardous waste generators.

(3) A permanent household hazardous waste collection facility that takes the actions specified in paragraph (2) is not subject to subdivision (b) of Section 25218.3.

(4) A permanent household waste collection facility may take the action specified in paragraph (2) notwithstanding any permit condition imposed upon the facility, a regulation adopted by the

1 department to ensure a household hazardous waste collection
2 facility does not accept hazardous waste from a commercial
3 generator other than a CESQG, or the status of the generator.

4 ~~SEC. 2. Section 25507 of the Health and Safety Code is~~
5 ~~amended to read:~~

6 ~~25507. (a) Except as provided in this article, a business shall~~
7 ~~establish and implement a business plan for emergency response~~
8 ~~to a release or threatened release of a hazardous material in~~
9 ~~accordance with the standards prescribed in the regulations adopted~~
10 ~~pursuant to Section 25503 if the business meets any of the~~
11 ~~following conditions:~~

12 ~~(1) The business handles a hazardous material or a mixture~~
13 ~~containing a hazardous material that has a quantity at any one time~~
14 ~~during the reporting year that is equal to, or greater than, 55 gallons~~
15 ~~for materials that are liquids, 500 pounds for solids, or 200 cubic~~
16 ~~feet for compressed gas. The physical state and quantity present~~
17 ~~of mixtures shall be determined by the physical state of the mixture~~
18 ~~as whole, not individual components, at standard temperature and~~
19 ~~pressure.~~

20 ~~(2) The business is required to submit chemical inventory~~
21 ~~information pursuant to Section 11022 of Title 42 of the United~~
22 ~~States Code.~~

23 ~~(3) The business handles at any one time during the reporting~~
24 ~~year an amount of a hazardous material that is equal to, or greater~~
25 ~~than the threshold planning quantity, under both of the following~~
26 ~~conditions:~~

27 ~~(A) The hazardous material is an extremely hazardous substance,~~
28 ~~as defined in Section 355.61 of Title 40 of the Code of Federal~~
29 ~~Regulations.~~

30 ~~(B) The threshold planning quantity for that extremely hazardous~~
31 ~~substance listed in Appendices A and B of Part 355 (commencing~~
32 ~~with Section 355.1) of Subchapter J of Chapter I of Title 40 of the~~
33 ~~Code of Federal Regulations is less than 500 pounds.~~

34 ~~(4) (A) The business handles at any one time during the~~
35 ~~reporting year a total weight of 5,000 pounds for solids or a total~~
36 ~~volume of 550 gallons for liquids, if the hazardous material is a~~
37 ~~solid or liquid substance that is classified as a hazard for purposes~~
38 ~~of Section 5194 of Title 8 of the California Code of Regulations~~
39 ~~solely as an irritant or sensitizer.~~

~~(B) The business handles at any one time during the reporting year a total weight of 10,000 pounds for solids or a total volume of 1,000 gallons for liquids if the hazardous material is a solid or liquid substance that is a paint that will be recycled or otherwise managed under a stewardship program approved by the department.~~

~~(5) (A) The business handles at any one time during the reporting year a total of 1,000 cubic feet, if the hazardous material is a compressed gas and is classified as a hazard for the purposes of Section 5194 of Title 8 of the California Code of Regulations solely as a compressed gas, unless the unified program agency finds, and provides notice to the business handling the product, that the handling of lesser quantities of that hazardous material requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.~~

~~(B) The unified program agency shall make the findings required by subparagraph (A) in consultation with the local fire chief.~~

~~(C) The hazardous materials subject to subparagraph (A) include a gas for which the only health and physical hazards are simple asphyxiation and the release of pressure.~~

~~(D) The hazardous materials subject to subparagraph (A) do not include gases in a cryogenic state.~~

~~(6) The business handles a radioactive material at any one time during the reporting year that is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1), of Chapter 1 of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with those regulations.~~

~~(7) The business handles perchlorate material, as defined in subdivision (c) of Section 25210.5, in a quantity at any one time during the reporting year that is equal to, or greater than, the thresholds listed in paragraph (1).~~

~~(b) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25506. The unified program agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars~~

1 (\$50) to pay for the costs incurred by the agency in processing the
2 inventory forms.

3 (e) (1) Lubricating oil is exempt from this section and Sections
4 25506 and 25508, for a single business facility, if the total volume
5 of each type of lubricating oil handled at that facility does not
6 exceed 55 gallons and the total volume of all types of lubricating
7 oil handled at that facility does not exceed 275 gallons, at any one
8 time.

9 (2) For purposes of this paragraph, "lubricating oil" means oil
10 intended for use in an internal combustion crankcase, or the
11 transmission, gearbox, differential, or hydraulic system of an
12 automobile, bus, truck, vessel, airplane, heavy equipment, or other
13 machinery powered by an internal combustion or electric powered
14 engine. "Lubricating oil" does not include used oil, as defined in
15 subdivision (a) of Section 25250.1.

16 (d) Oil-filled electrical equipment that is not contiguous to an
17 electric facility is exempt from this section and Sections 25506
18 and 25508 if the aggregate capacity is less than 1,320 gallons.

19 (e) Hazardous material contained solely in a consumer product
20 for direct distribution to, and use by, the general public is exempt
21 from the business plan requirements of this article unless the
22 unified program agency has found, and has provided notice to the
23 business handling the product, that the handling of certain
24 quantities of the product requires the submission of a business
25 plan, or any portion thereof, in response to public health, safety,
26 or environmental concerns.

27 (f) In addition to the authority specified in subdivision (h), the
28 governing body of the unified program agency may, in exceptional
29 circumstances, following notice and public hearing, exempt a
30 hazardous substance specified in subdivision (o) of Section 25501
31 from Section 25506, if it is found that the hazardous substance
32 would not pose a present or potential danger to the environment
33 or to human health and safety if the hazardous substance was
34 released into the environment. The unified program agency shall
35 send a notice to the office and the secretary within 15 days from
36 the effective date of any exemption granted pursuant to this
37 subdivision.

38 (g) The unified program agency, upon application by a handler,
39 may exempt the handler, under conditions that the unified program
40 agency determines to be proper, from any portion of the

1 ~~requirements to establish and maintain a business plan, upon a~~
2 ~~written finding that the exemption would not pose a significant~~
3 ~~present or potential hazard to human health or safety or to the~~
4 ~~environment, or affect the ability of the unified program agency~~
5 ~~and emergency rescue personnel to effectively respond to the~~
6 ~~release of a hazardous material, and that there are unusual~~
7 ~~circumstances justifying the exemption. The unified program~~
8 ~~agency shall specify in writing the basis for any exemption under~~
9 ~~this subdivision.~~

10 ~~(h) The unified program agency, upon application by a handler,~~
11 ~~may exempt a hazardous material from the inventory provisions~~
12 ~~of this article upon proof that the material does not pose a~~
13 ~~significant present or potential hazard to human health and safety~~
14 ~~or to the environment if released into the workplace or~~
15 ~~environment. The unified program agency shall specify in writing~~
16 ~~the basis for any exemption under this subdivision.~~

17 ~~(i) The unified program agency shall adopt procedures to provide~~
18 ~~for public input when approving applications submitted pursuant~~
19 ~~to subdivisions (g) and (h).~~

20 *SEC. 2. Section 25507 of the Health and Safety Code is*
21 *amended to read:*

22 25507. (a) Except as provided in this article, a business shall
23 establish and implement a business plan for emergency response
24 to a release or threatened release of a hazardous material in
25 accordance with the standards prescribed in the regulations adopted
26 pursuant to Section 25503 if the business meets any of the
27 following conditions:

28 (1) The business handles a hazardous material or a mixture
29 containing a hazardous material that has a quantity at any one time
30 during the reporting year that is equal to, or greater than, 55 gallons
31 for materials that are liquids, 500 pounds for solids, or 200 cubic
32 feet for compressed gas. The physical state and quantity present
33 of mixtures shall be determined by the physical state of the mixture
34 as whole, not individual components, at standard temperature and
35 pressure.

36 (2) The business is required to submit chemical inventory
37 information pursuant to Section 11022 of Title 42 of the United
38 States Code.

39 (3) The business handles at any one time during the reporting
40 year an amount of a hazardous material that is equal to, or greater

1 than the threshold planning quantity, under both of the following
2 conditions:

3 (A) The hazardous material is an extremely hazardous substance,
4 as defined in Section 355.61 of Title 40 of the Code of Federal
5 Regulations.

6 (B) The threshold planning quantity for that extremely hazardous
7 substance listed in Appendices A and B of Part 355 (commencing
8 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
9 Code of Federal Regulations is less than 500 pounds.

10 (4) (A) ~~The~~ *Except as provided in subparagraph (B), a business*
11 *handles at any one time during the reporting year a total weight*
12 *of 5,000 pounds for solids or a total volume of 550 gallons for*
13 *liquids, if the hazardous material is a solid or liquid substance that*
14 *is classified as a hazard for purposes of Section 5194 of Title 8 of*
15 *the California Code of Regulations solely as an irritant or sensitizer,*
16 *unless the unified program agency finds, and provides notice to*
17 *the business handling the product, that the handling of lesser*
18 *quantities of that hazardous material requires the submission of a*
19 *business plan, or any portion of a business plan, in response to*
20 *public health, safety, or environmental concerns.*

21 (B) ~~The unified program agency shall make the findings required~~
22 ~~by subparagraph (A) in consultation with the local fire chief. If the~~
23 ~~hazardous material handled by the business is a paint that will be~~
24 ~~recycled or otherwise managed under an architectural paint~~
25 ~~recovery program approved by the Department of Resources~~
26 ~~Recovery and Recycling pursuant to Chapter 5 (commencing with~~
27 ~~Section 48700) of Part 7 of Division 30 of the Public Resources~~
28 ~~Code, the business is required to establish and implement a~~
29 ~~business plan only if the business handles at any one time during~~
30 ~~the reporting year a total weight of 10,000 pounds of solid~~
31 ~~hazardous materials or a total volume of 1,000 gallons of liquid~~
32 ~~hazardous materials.~~

33 (5) (A) The business handles at any one time during the
34 reporting year a total of 1,000 cubic feet, if the hazardous material
35 is a compressed gas and is classified as a hazard for the purposes
36 of Section 5194 of Title 8 of the California Code of Regulations
37 solely as a compressed gas, unless the unified program agency
38 finds, and provides notice to the business handling the product,
39 that the handling of lesser quantities of that hazardous material

1 requires the submission of a business plan, or any portion thereof,
2 in response to public health, safety, or environmental concerns.

3 (B) The unified program agency shall make the findings required
4 by subparagraph (A) in consultation with the local fire chief.

5 (C) The hazardous materials subject to subparagraph (A) include
6 a gas for which the only health and physical hazards are simple
7 asphyxiation and the release of pressure.

8 (D) The hazardous materials subject to subparagraph (A) do
9 not include gases in a cryogenic state.

10 (6) The business handles a radioactive material at any one time
11 during the reporting year that is handled in quantities for which
12 an emergency plan is required to be adopted pursuant to Part 30
13 (commencing with Section 30.1), Part 40 (commencing with
14 Section 40.1), or Part 70 (commencing with Section 70.1), of
15 Chapter 1 of Title 10 of the Code of Federal Regulations, or
16 pursuant to any regulations adopted by the state in accordance with
17 those regulations.

18 (7) The business handles perchlorate material, as defined in
19 subdivision (c) of Section 25210.5, in a quantity at any one time
20 during the reporting year that is equal to, or greater than, the
21 thresholds listed in paragraph (1).

22 (b) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained
23 by a physician, dentist, podiatrist, veterinarian, or pharmacist, at
24 his or her office or place of business, stored at each office or place
25 of business in quantities of not more than 1,000 cubic feet of each
26 material at any one time, are exempt from this section and from
27 Section 25506. The unified program agency may require a one-time
28 inventory of these materials for a fee not to exceed fifty dollars
29 (\$50) to pay for the costs incurred by the agency in processing the
30 inventory forms.

31 (c) (1) Lubricating oil is exempt from this section and Sections
32 25506 and 25508, for a single business facility, if the total volume
33 of each type of lubricating oil handled at that facility does not
34 exceed 55 gallons and the total volume of all types of lubricating
35 oil handled at that facility does not exceed 275 gallons, at any one
36 time.

37 (2) For purposes of this paragraph, "lubricating oil" means oil
38 intended for use in an internal combustion crankcase, or the
39 transmission, gearbox, differential, or hydraulic system of an
40 automobile, bus, truck, vessel, airplane, heavy equipment, or other

1 machinery powered by an internal combustion or electric powered
2 engine. “Lubricating oil” does not include used oil, as defined in
3 subdivision (a) of Section 25250.1.

4 (d) Oil-filled electrical equipment that is not contiguous to an
5 electric facility is exempt from this section and Sections 25506
6 and 25508 if the aggregate capacity is less than 1,320 gallons.

7 (e) Hazardous material contained solely in a consumer product
8 for direct distribution to, and use by, the general public is exempt
9 from the business plan requirements of this article unless the
10 unified program agency has found, and has provided notice to the
11 business handling the product, that the handling of certain
12 quantities of the product requires the submission of a business
13 plan, or any portion thereof, in response to public health, safety,
14 or environmental concerns.

15 (f) In addition to the authority specified in subdivision (h), the
16 governing body of the unified program agency may, in exceptional
17 circumstances, following notice and public hearing, exempt a
18 hazardous substance specified in subdivision ~~(o)~~ (n) of Section
19 25501 from Section 25506, if it is found that the hazardous
20 substance would not pose a present or potential danger to the
21 environment or to human health and safety if the hazardous
22 substance was released into the environment. The unified program
23 agency shall send a notice to the office and the secretary within
24 15 days from the effective date of any exemption granted pursuant
25 to this subdivision.

26 (g) The unified program agency, upon application by a handler,
27 may exempt the handler, under conditions that the unified program
28 agency determines to be proper, from any portion of the
29 requirements to establish and maintain a business plan, upon a
30 written finding that the exemption would not pose a significant
31 present or potential hazard to human health or safety or to the
32 environment, or affect the ability of the unified program agency
33 and emergency rescue personnel to effectively respond to the
34 release of a hazardous material, and that there are unusual
35 circumstances justifying the exemption. The unified program
36 agency shall specify in writing the basis for any exemption under
37 this subdivision.

38 (h) The unified program agency, upon application by a handler,
39 may exempt a hazardous material from the inventory provisions
40 of this article upon proof that the material does not pose a

1 significant present or potential hazard to human health and safety
2 or to the environment if released into the workplace or
3 environment. The unified program agency shall specify in writing
4 the basis for any exemption under this subdivision.

5 (i) The unified program agency shall adopt procedures to provide
6 for public input when approving applications submitted pursuant
7 to subdivisions (g) and (h).

8 SEC. 3. Section 25513 of the Health and Safety Code is
9 amended to read:

10 25513. (a) Each administering county or city may, upon a
11 majority vote of the governing body, adopt a schedule of fees to
12 be collected from each business required to submit a business plan
13 pursuant to this article that is within its jurisdiction. The governing
14 body may provide for the waiver of fees when a business, as
15 defined in paragraph (3), (4), or (5) of subdivision (c) of Section
16 25501, submits a business plan. The fee shall be set in an amount
17 sufficient to pay only those costs incurred by the unified program
18 agency in carrying out this article. In determining the fee schedule,
19 the unified program agency shall consider the volume and degree
20 of hazard potential of the hazardous materials handled by the
21 businesses subject to this article.

22 (b) ~~A unified program agency may charge a one-time fee, not~~
23 ~~to exceed one hundred dollars (\$100), to a business described in~~
24 ~~subparagraph (B) of paragraph (4) of subdivision (a) of Section~~
25 ~~25507. The fees collected pursuant to this subdivision shall not~~
26 ~~exceed the administrative costs of the unified program agency in~~
27 ~~carrying out its responsibilities relating to these businesses. shall~~
28 ~~not impose a fee upon a business that is implementing an~~
29 ~~architectural paint recovery program approved by the Department~~
30 ~~of Resources Recovery and Recycling pursuant to Chapter 5~~
31 ~~(commencing with Section 48700) of Part 7 of Division 30 of the~~
32 ~~Public Resources Code and that is exempt from the business plan~~
33 ~~requirements pursuant to subparagraph (B) of paragraph (4) of~~
34 ~~subdivision (a) of Section 25507, for the cost of processing that~~
35 ~~exemption.~~

36 SEC. 4. ~~No reimbursement is required by this act pursuant to~~
37 ~~Section 6 of Article XIII B of the California Constitution for certain~~
38 ~~costs that may be incurred by a local agency or school district~~
39 ~~because, in that regard, this act creates a new crime or infraction,~~
40 ~~eliminates a crime or infraction, or changes the penalty for a crime~~

1 ~~or infraction, within the meaning of Section 17556 of the~~
2 ~~Government Code, or changes the definition of a crime within the~~
3 ~~meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

5 However, if the Commission on State Mandates determines that
6 this act contains other costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

O